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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,596	10/19/2000	Lily Barkovic Mummert	YOR920000461-US1	8300
7590 06/30/2008				
Anne Vachon Dougherty 3173 Cedar Road Yorktown Heights, NY 10598			EXAMINER TODD, GREGORY G	
			ART UNIT 2157	PAPER NUMBER
			MAIL DATE 06/30/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

09/692,596

Applicant(s)

MUMMERT ET AL.

Examiner

GREGORY G. TODD

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 6-13, 15-18 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 6-13, 15-18 and 21-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Amendment

1. This office action is in response to applicant's amendment and request for continued examination filed, 01 April 2008, of application filed, with the above serial number, on 19 October 2000 in which claims 1, 10, and 12 have been amended, 2, 3, 5, 14, and 19-20 have been cancelled, and claims 21-26 have been added. Claims 1, 4, 6-13, 15-18, and 21-26 are therefore pending in the application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4, 6-13, 15-18, and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang et al (hereinafter "Yang", 6,542,854) in view of Chen et al (hereinafter "Chen", 5,819,083), and further in view of Miller (hereinafter "Miller", 5,408,663).

As per Claim 1, Yang teaches a method for evaluating workload across a processing environment having a plurality of computer systems each having a plurality of assigned workload units comprising the steps of:

assigning a plurality of impact values, one impact value for each workload unit assigned for each of a plurality of computing systems, wherein said assigning of each

impact value comprises determining a change in system expiration date should a workload unit be removed from the system (at least col. 5 line 1 - col. 6 line 19; CAE/UFW/CAW using workload definition information for sizing/ cost purposes); and assessing the impact of moving the workload from a donor computer system to a recipient computer system based on said impact values (at least col. 33, lines 30-62; evaluating systems for suitable operation of workload).

Yang fails to explicitly teach a processing environment each computer system having a plurality of assigned workload units and altering the workload in the processing environment to change expiration dates of at least two of said plurality of computer systems. However, the use and advantages for using such a system is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Chen. Chen teaches a parallel database system comprised of a plurality of computer systems wherein as data becomes too large on existing systems, new nodes are added and data on existing nodes can be redistributed to the new nodes, thereby resulting in change is expiration date of the existing node and the new node (at least col. 4:56-61; 6:3-32). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the use of Chen's system into Yang's system as Yang teaches a plurality of user stations running the programs over a LAN (at least col. 33 line 64 – col. 34 line 6; col. 35 line 51 – col. 36 line 9) as well as selecting different CPU's to operate on a workload if it results in over 100% utilization (col. 5:1-10), and thus with Chen, it would be obvious the capacity planning of Yang as

workload becomes too much for a single CPU, to similarly use Chen's redistribution of workload as workload becomes too much for existing nodes.

Yang and Chen fail to teach assigning an impact number representing the number of days that the expiration date of the computer system would be changed with all other workload units remaining the same. However, the use and advantages for using such a system is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Miller. Miller teaches system task scheduling wherein tasks are given effort requirements (in hours/days/etc) to complete such tasks/workloads are inputted into a model and resource availability according to such schedule is calculated accordingly (at least col. 9:3-68). All of the component parts are known in Yang, Chen and Miller. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, as all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results.

As per Claim 4. The method of Claim 1 further comprising sorting said workload units based on said impact values into a sorted impact list (at least col. 26 line 45 - col. 27 line 5).

As per Claim 6. The method of Claim 1 further comprising comparing the expiration date of each of said plurality of computing systems to at least one target planning date for servicing each of said plurality of computing systems (at least col. 33, lines 30-62).

As per Claim 7. The method of Claim 6 further comprising altering the workload in the processing environment to change the expiration date relative to the target planning date for at least two of said plurality of computer systems (at least col. 25, lines 13-20).

As per Claim 8. The method of Claim 6 further comprising the steps of:
creating a From list of computer systems for which the expiration date precedes the at least one planning date;
creating a To list of computer systems for which the expiration date is later than said at least one planning date; and
reassigning workload units from computer systems on said From list to computer systems on said To list based on said impact values (at least col. 6, lines 9-36; transferable workload for capacity planning).

As per Claim 9. The method of Claim 8 further comprising calculating new expiration dates for computer systems on said From and said To lists after said reassigning (at least col. 5 line 1 - col. 6 line 36).

As per Claim 11. The apparatus of Claim 10 further comprising at least one storage location accessible by the administrative processor for storing data relating to said plurality of computer systems (at least Fig. 7).

Claims 10 and 12-26 do not add or define any additional limitations over claims 1-9 and 11 and therefore are rejected for similar reasons.

Response to Arguments

4. Applicant's arguments with respect to claims 1, 4, 6-13, 15-18, and 21-26 have been considered but are moot in view of the new ground(s) of rejection.

Additionally, Applicant argues Yang does not teach "evaluating workload across a processing environment having a plurality of computer systems each having a plurality of assigned workload units". In response to applicant's arguments, the recitation has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., impact values relative to *existing* workload) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It is further noted that the claims, in fact, explicitly recite the terms 'evaluating' and 'assessing' (see claim 1) the impact of moving the workload units, as well as 'planning' (see claim 6), wherein such terminology does not amount to

existing workloads, but rather future performance and potential for workload distribution, thus analogous with Yang's capacity planning system.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Newly cited Caccavale, in addition to previously cited Minowa et al, Odhner et al, Quernemoen, Papaefstathiou, Abu Electronic Ata, MacFarlane et al, Chafe, Fong et al, Hartsell et al, Mummert et al, Flockhart et al, and Sanders et al are cited for disclosing pertinent information related to the claimed invention. Applicants are requested to consider the prior art reference for relevant teachings when responding to this office action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY G. TODD whose telephone number is (571)272-4011. The examiner can normally be reached on Monday - Friday 9:00am-6:00pm w/ first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571)272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/G. G. T./

Examiner, Art Unit 2157

/Ario Etienne/

Supervisory Patent Examiner, Art Unit 2157